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MAR 10 2006  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *William Samuilege*

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**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A SUSPENDED ) Nos. 04-1113 and 04-2065  
MEMBER OF THE STATE BAR OF )  
ARIZONA, )  
) **FINDINGS OF FACT,**  
**PAUL G. MENKVELD,** ) **CONCLUSIONS OF LAW AND**  
**Bar No. 009766** ) **RECOMMENDATION OF**  
) **HEARING OFFICER 9I**  
Respondent. )

An aggravation and mitigation hearing was held on this matter on January 5, 2006 at 10:30 AM. The hearing was held in the offices of Chandler & Udall, LLP, 2100 Bank of America Plaza, 33 North Stone Avenue, Tucson, Arizona 85701. The State Bar of Arizona was represented by Angela M. B. Napper, Esq., bar counsel. Also present were Randall M. Sammons, Esq. And Jeffrey Carter, Esq. Respondent did not appear.

Based on the evidence produced and the evidence produced at the hearing, the hearing officer makes the following findings of fact and conclusions of law and recommendation.

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**General Allegations:**

2. On April 13, 2005, the Board of Governors of the State Bar summarily suspended Respondent for failure to comply with mandatory continuing legal education requirements.

3. In January 2003, Fred Corron's (Complainant) mother, Rita J. Corron, died.

-2-

1           5.     On March 11, 2003, in Pima Superior Court, PB 20030291,  
2 Complainant was appointed Personal Representative of the estate. The  
3 approximate value of the estate was \$70,000.  
4

5           6.     After a meeting between Respondent and Complainant discussing  
6 the distribution of the estate, it was decided that interim distributions would be  
7 made to the beneficiaries totaling \$50,000.00 and leaving a remainder of  
8 approximately \$20,000.00 to be held in Respondent's client trust account for the  
9 estate until final distribution.  
10

11           7.     After April 20, 2003, Respondent failed to return any of  
12 Complainant's letters or telephone calls inquiring as to the status of the  
13 distribution of the estate.  
14

15           8.     On or about July 6, 2004, the State Bar's Attorney/Consumer  
16 Assistance Program ("ACAP") received an inquiry letter from Complainant  
17 regarding Respondent's lack of communication with Complainant and  
18 Respondent's lack of action in the probate of the estate.  
19

20           9.     By letter dated August 4, 2004, ACAP sent a copy of  
21 Complainant's inquiry letter to Respondent and requested his prompt attention to  
22 the matter.  
23

24           10.    On or about August 5, 2004, Respondent distributed another \$500.00  
25 from the estate to Complainant.

1           11. In a letter dated November 5, 2004, James R. Beaman, Esq.,  
2 contacted Respondent on behalf of Complainant. The letter requested  
3 communication from Respondent to determine the status of the probate and an  
4 accounting of the approximately \$25,000, to \$27,000, of estate money held in  
5 Respondent's trust account for the estate.<sup>1</sup>  
6

7           12. Respondent failed to contact Mr. Beaman or Complainant.  
8

9           13. Mr. Beaman therefore advised Complainant to file a complaint with  
10 the State Bar.

11           14. On or about November 18, 2004, the State Bar received another  
12 inquiry from Complainant alleging Respondent's continued lack of  
13 communication and requesting an accounting of the estate money held in  
14 Respondent's client trust account. Complainant further stated that he was in  
15 "desperate financial straits" and needed his share of the estate funds held in  
16 Respondent's client trust account.  
17

18           15. By letter dated November 30, 2004, bar counsel sent a copy of  
19 Complainant's submission to Respondent and requested a response within twenty  
20 (20) days.  
21  
22  
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24  
25 <sup>1</sup> Based upon the estimated value of the estate and the early distribution totaling  
nearly \$50,000, the remainder held by Respondent was likely closer to  
\$20,000.00.

1           16.   Respondent failed to respond to the State Bar's November 30, 2004,  
2 letter.

3           17.   In a facsimile dated January 14, 2005, Complainant advised the State  
4 Bar that he had recently gone to Respondent's office requesting information, and  
5 that Respondent had failed to contact him thereafter.  
6

7           18.   By letter dated January 19, 2005, bar counsel reminded Respondent  
8 that he had not responded to the State Bar's letter dated November 30, 2004, and  
9 was given twenty (20) days to respond. The letter included copies of several  
10 additional submissions from Complainant, and advised Respondent that if he  
11 failed to respond he would be subpoenaed for a deposition.  
12  
13

14           19.   Respondent failed to respond to the State Bar's January 19, 2005,  
15 letter.

16           20.   On or about June 13, 2005, a subpoena duces tecum was issued in  
17 State Bar file nos. 04-1113, and 04-2065 requesting production of Respondent's  
18 client trust account bank records from the Bank of America ("the Bank") for the  
19 period of April 1, 1997, through June 30, 2005.  
20

21           21.   On or about July 15, 2005, bar counsel received a copy of  
22 Respondent's client trust account bank records from July 1, 1998 through June  
23 30, 2005 from the Bank. The Bank could not provide records prior to July 1,  
24  
25

1 1998, because the Bank only retains records for a period of seven (7) years;  
2 therefore, those older than July 1, 1998 have been destroyed.

3  
4 22. State Bar Staff Trust Account Examiner Gloria Barr reviewed  
5 Respondent's trust account bank records.

6 23. Based on the records provided by the Bank, Ms. Barr determined the  
7 following transactions were made for the benefit of Complainant in State Bar file  
8 no. 04-1113:  
9

Date	Debit	Credit	Balance	Description	Payable to
08/25/03		\$69,731.95	\$69,731.95	Deposit	<i>NO COPY PROVIDED BY BANK</i>
08/29/03	\$6,000.00		\$63,736.95	1182	Nita Jane Heuser – estate of Rita J. Corron
09/05/03	\$2,140.00		\$61,522.95	1183	Paul Menkveld PC – costs
10/02/03	\$6,000.00		\$55,522.95	1185	Barbara Helen Gruss – estate of Rita J. Corron
10/02/03	\$6,000.00		\$49,522.95	1187	Frederick Joseph Corron – estate of Rita J. Corron
10/02/03	\$6,000.00		\$43,522.95	1188	David Douglas Corron – estate of Rita J. Corron
10/03/03	\$6,000.00		\$37,522.95	1184	Jennifer Rose Davis – estate of Rita J. Corron
10/03/03	\$6,000.00		\$31,522.95	1189	Gregory Paul Corron – estate of Rita J. Corron
10/06/03	\$6,000.00		\$25,522.95	1186	Theresa Marie Bacon – estate of Rita J. Corron
10/17/03	\$6,000.00		\$19,522.95	1190	Anthony Raymond Corron – estate of Rita J. Corron
10/22/03	\$2,556.00		\$16,966.95	1191	Paul Menkveld PC – attorney's fees
12/02/03	\$1,710.00		\$15,256.95	1192	Paul Menkveld PC – fees
08/05/04	\$500.00		\$1,654.95	1201	Fred Corron – estate of Rita J. Corron

22  
23 24. Bank records indicate that the initial deposit to the trust account for  
24 the Corron Estate was \$69,731.95.  
25

1        25. Based upon Complainant and Mr. Beaman's assessments,  
2 Respondent should have held approximately \$25,000 to \$27,000 in trust for the  
3 estate after the initial disbursements.  
4

5        26. Review of the bank records reveals that eight separate \$6000.00  
6 distributions were made, presumably all to family members, most indicated by the  
7 same last name as the decedent, between August 29, 2003 and October 17, 2003,  
8 totaling \$48,000.00, such that Respondent should have held approximately  
9 \$21,731.95 in the trust for the estate after the initial disbursements.  
10

11        27. After the final \$6,000.00 disbursement, Respondent's trust account  
12 balance fell below and remained below \$20,000.00 from October 18, 2003  
13 through April 18, 2004 and again from April 19, 2004 to June 30, 2005.  
14

15        28. Recent information received from the bank regarding Respondent's  
16 trust account indicates that as of August 23, 2005, Respondent's trust account was  
17 overdrawn in an amount of \$845.00.  
18

19        29. Additional recent information received from the bank regarding  
20 Respondent's trust account indicates that Respondent's trust account was not  
21 properly established in accordance with Rule 44(a) and (c), Ariz.R.S.Ct., in as  
22 much as Respondent's trust account was not a readily identifiable interest-bearing  
23 trust account, and Respondent's trust account did not properly include the  
24 Arizona Bar Foundation's tax payer identification number.  
25

1        30. After a detailed analysis of the bank records, Ms. Barr determined  
2 that Respondent disbursed funds through telephonic transfers, and not by pre-  
3 numbered check or electronic transfer from his client trust account to another  
4 account as follows:  
5

Date	Transfer Amount
09/20/00	\$3,000.00
01/22/04	\$400.00
06/02/04	\$1,600.00
07/08/04	\$990.00
07/19/04	\$1,530.00
08/02/04	\$936.00
08/05/04	\$936.00
08/12/04	\$756.00
09/07/04	\$450.00
09/10/04	\$200.00
09/10/04	\$43.95

13  
14        31. Ms Barr further determined that Respondent disbursed funds by  
15 withdrawal, and not by pre-numbered check or electronic transfer from his client  
16 trust account as follows:  
17

Date	Withdrawal Amount
04/19/04	\$35,000.00
08/30/04	\$200.00

20 Conclusions of Law - Count One (Fred Corron)  
21

22        32. By failing to abide by Complainant's decisions concerning the  
23 objectives of representation, specifically, by failing to expedite the administration  
24 of the estate, Respondent violated ER 1.2(a).  
25



1       33. By failing to act with reasonable diligence and promptness in  
2 representing Complainant and expediting the administration of the estate,  
3 Respondent violated ER 1.3.  
4

5       34. By failing to communicate with Complainant, Respondent violated  
6 ER 1.4(a)(1), (2), (3), and (4).  
7

8       35. By abandoning the representation, but reimbursing himself from the  
9 estate funds for legal services, Respondent collected an unreasonable fee and  
10 therefore violated ER 1.5(a).  
11

12       36. By failing to timely and appropriately distribute funds held in the  
13 estate, Respondent violated ER 1.15, Rule 43 and Rule 44, Ariz.R.S.Ct.  
14

15       37. By having a trust account balance in August 2004 less than that  
16 which should have been held in trust for his client and the estate, Respondent  
17 failed to safeguard client funds and protect client property in violation of ER 1.15,  
18 Rule 43, and Rule 44, Ariz.R.S.Ct.  
19

20       38. By effectively abandoning the case, ceasing all communication with  
21 Complainant, Respondent failed to terminate his representation in such a way that  
22 protected Complainant's interests and therefore violated ER 1.16(d).  
23

24       39. By failing to make reasonable efforts to expedite the administration  
25 of the estate, Respondent violated ER 3.2.

1       40. By failing to make all trust account disbursements by pre-numbered  
2 check or by electronic transfer, Respondent violated Rule 43(d)(4).

3  
4       41. By failing to properly establish his trust account as an identifiable,  
5 interest-bearing trust account, and failing to include the Arizona Bar Foundation  
6 tax payer identification number on the account, Respondent violated Rule 44(a)  
7 and (c).

8  
9 Findings of Fact - Count Two - (Randall Sammons, Esq.)

10       42. On or about April 29, 1997, Victoria Enderle (decedent) died.  
11 Shortly thereafter Respondent was hired by decedent's mother, Donna  
12 Westenberg to handle the probate of the estate.

13  
14       43. On or about May 8, 1997, the decedent's holographic will was filed  
15 in the Pima County Superior Court, P 27828. Ms. Westenberg was appointed  
16 Personal Representative of the estate.

17  
18       44. The beneficiaries of the estate were Ms. Westenberg and decedent's  
19 two then minor children, Crystal Enderle and Clint Enderle.

20       45. Pursuant to the will, decedent left her home, personal property and  
21 money held in checking and savings accounts to be equally divided between  
22 Crystal and Clint. Decedent's Amway distributorship, Enterprises International,  
23 Inc. was to be divided as follows: 20% to Ms. Westenberg, 40% to Crystal and  
24 40% to Clint.  
25

1           46. On or about December 16, 1997, Respondent assisted in the sale of  
2 the decedent's Amway distributorship for \$82,500.

3           47. During the administration of the estate Respondent marshaled certain  
4 assets of the estate and received assets on behalf of the estate that were previously  
5 held in Mexico.  
6

7           48. In or about 2000, Crystal, having reached the age of majority, began  
8 to inquire as to why the estate had not yet been closed.  
9

10          49. Respondent did not respond to Crystal's inquiries.

11          50. Frustrated by Respondent's non-response, Crystal hired Randall M.  
12 Sammons, Esq. (Complainant) to represent her in making inquiries regarding the  
13 estate.  
14

15          51. In letter dated October 17, 2001, Complainant asked Respondent  
16 about the status of the estate and requested that the estate be distributed and  
17 closed.  
18

19          52. Respondent failed to respond to Complainant's October 17, 2001,  
20 letter. Instead, Respondent filed with the court an Accounting and Proposal for  
21 Distribution that was contrary to the plain language of the will. Respondent  
22 proposed that a substantial portion of the liquid assets of the estate be distributed  
23 to Ms. Westenberg and that the non-liquid assets be distributed to Crystal and  
24 Clint.  
25

1           53.    Thereafter, on or about November 29, 2001, Crystal and Clint filed a  
2           Petition for Removal of Personal Representative and the matter proceeded to  
3           litigation.  
4

5           54.    A tentative settlement was discussed between Ms. Westenberg and  
6           the children wherein certain funds previously expended by Ms. Westenberg and  
7           Respondent were to be returned to the estate, and Crystal would be substituted as  
8           the Personal Representative. The parties did not settle under these terms.  
9

10          55.    Ms. Westenberg then terminated Respondent's services and retained  
11          new counsel. Thereafter, the parties did reach an agreement regarding the  
12          Stipulation for the Substitution of Personal Representative, naming Crystal as the  
13          new personal representative.  
14

15          56.    Respondent refused to settle regarding his claims for attorney's fees  
16          against the estate and elected to proceed to trial. The estate hired an expert  
17          witness, William Wissler, Esq., to testify regarding the compensation paid to  
18          Respondent during the course of his representation of the estate.  
19

20          57.    On June 3, 2003, after hearing both Mr. Wissler's and Respondent's  
21          testimony, the court found that Mr. Wissler's testimony was persuasive and his  
22          estimation of hours was realistic. The court ordered that counsel submit  
23          memoranda as to whether the estate was entitled to reimbursement of attorney's  
24          fees previously received.  
25

1        58. The court directed that the estate file an Application for Fees, which  
2 was filed. Respondent opposed the Application for Fees. The court entered an  
3 award of fees to the estate in connection with the litigation. Respondent failed to  
4 reimburse the estate for fees previously received as ordered by the court.  
5

6        59. Complainant prepared and lodged a Judgment with the court and a  
7 copy was sent to Respondent on or about January 30, 2004. Respondent did not  
8 file any objections to the form of the Judgment.  
9

10       60. On February 23, 2004, the Honorable Clark W. Munger, entered  
11 judgment against Respondent in a total amount of \$20,370. Respondent was to  
12 reimburse the estate for fees previously received in the amount of \$13,890.00 and  
13 was to pay an additional \$6480.00 in attorney's fees and expert fees. The court  
14 further found that Respondent had "unnecessarily expanded the litigation in  
15 connection with this matter and [had] not acted in good faith in connection with  
16 this matter and [had] not acted in good faith in connection with the settlement of  
17 this matter, and otherwise breached his fiduciary duties to this Estate."  
18  
19

20       61. The testimony of Complainant, Randall Sammons, presented at the  
21 aggravation hearing affirmed the approximate total amount owed to the estate,  
22 Mr. Sammons and an expert, per the judgment of the court and that Respondent,  
23 as of the date of the hearing, had not paid the judgment.  
24  
25

1       62. On or about March 10, 2004, Respondent filed a Motion for New  
2 Trial or, in the alternative, Motion to Alter or Amend the Judgment. The court  
3 denied Respondent's motion. Respondent failed to make any arrangements for  
4 the payment of the judgment.  
5

6       63. On or about May 10, 2004, Complainant noticed Respondent for a  
7 Supplemental Proceedings deposition. A subpoena duces tecum was issued for  
8 Respondent to appear and provide tax returns and bank statements.  
9

10       64. On July 21, 2004, Respondent appeared for the Supplemental  
11 Proceedings deposition but informed the court that he was not of sufficient health  
12 to withstand the examination. The court ordered Respondent to provide  
13 Complainant with certain documents by July 23, 2004, and additional documents  
14 by August 20, 2004.  
15

16       65. Respondent failed to provide Complainant with all the documents as  
17 ordered by the court.  
18

19       66. On or about August 27, 2004, Complainant filed a Motion for  
20 Sanctions against Respondent.  
21

22       67. In addition, in a letter dated August 27, 2004, Complainant asked  
23 Respondent his intentions regarding payment of the judgment. Complainant  
24 further informed Respondent that due to his lack of cooperation and  
25 communication regarding payment of the judgment Complainant had filed a

1 Motion for Sanctions with the court and had requested Client Protection Fund  
2 application information from the State Bar.

3  
4 68. Respondent did not file a response to the Motion for Sanctions and  
5 failed to appear at the scheduled hearing on August 31, 2004. At the hearing the  
6 court ordered Complainant to file a Notice of Hearing on the Motion for  
7 Sanctions. Another court date was set.

8  
9 69. On September 27, 2004, Respondent again failed to appear at the  
10 hearing on the Motion for Sanctions. The court ordered Complainant to inform  
11 the State Bar of Respondent's actions and inactions regarding Respondent's  
12 representation of the estate.

13  
14 70. In a letter to the State Bar dated December 7, 2004, Complainant  
15 alleged specifically the ethical misconduct committed by Respondent.

16  
17 71. In a letter dated January 11, 2005, the State Bar informed  
18 Respondent of the allegations received from Complainant concerning his conduct.  
19 Respondent was given twenty (20) days to respond.

20  
21 72. Respondent failed to reply to the State Bar's letter dated January 11,  
22 2005.

23  
24 73. In a letter dated February 17, 2005, the State Bar sent Respondent a  
25 reminder to referencing the letter dated January 11, 2005, and requested a  
response. Respondent was given twenty (20) days to respond.

1           74. Respondent failed to reply to the State Bar's letter dated February  
2 17, 2005.

3  
4           75. On or about June 13, 2005, a subpoena duces tecum was issued in  
5 State Bar file nos. 04-1113, and 04-2065 requesting production of Respondent's  
6 client trust account bank records from the Bank of America ("the Bank") for the  
7 period of April 1, 1997, through June 30, 2005.

8  
9           76. On or about July 15, 2005, bar counsel received a copy of  
10 Respondent's client trust account bank records from July 1, 1998 through June  
11 30, 2005 from the Bank. The Bank could not provide records prior to July 1,  
12 1998, because the Bank only retains records for a period of seven (7) years;  
13 therefore, those older than July 1, 1998 have been destroyed.

14  
15           77. None of the transactions in the bank records indicated any  
16 disbursements or deposits made for the benefit of the Enderle estate or Ms.  
17 Westenberg.

18  
19 Conclusions of Law – Count Two (Randall Sammons, Esq.)

20           78. By collecting an unreasonable fee Respondent violated ER 1.5.

21           79. By acting in bad faith and failing to cooperate in expediting the  
22 litigation consistent with the interests of the estate, Respondent violated ER 3.2.

23  
24           80. By failing to provide documentation to Complainant as was ordered  
25 by the court, Respondent violated ER 3.4(c) and Rule 53(f).



1           81. By failing to attend at least two hearings set by the court, Respondent  
2 violated ER 3.4(c) and Rule 53(f).

3 Findings of Fact - Count Three - failure to cooperate with disciplinary  
4 proceedings (State Bar)

5           82. On or about February 15, 2005, a Subpoena under State Bar file nos.  
6 04-1113, and 04-2065, was issued compelling Respondent's appearance at a  
7 deposition on March 15, 2005, at 9:30 a.m. The subpoena was sent certified mail  
8 to Respondent's address of record with the State Bar, 177 N. Church, Suite 200;  
9 Tucson, Arizona.  
10

11           83. On or about February 17, 2005, a Heather Schmitz signed the  
12 certified mail delivery receipt for the subpoena.  
13

14           84. By letter dated March 7, 2005, bar counsel reminded Respondent of  
15 the deposition scheduled for March 15, 2005.  
16

17           85. Respondent failed to appear for the March 15, 2005 deposition.

18           86. In or about the end of March 2005, despite the receipt having been  
19 signed by Heather Schmitz, the envelope containing the subpoena was returned to  
20 the State Bar stamped "returned to sender UNCLAIMED." On the packet the  
21 address of record for Respondent had been crossed out and a residential  
22 apartment address, 3407 N. 2<sup>nd</sup> Avenue, #2109, Tucson, Arizona, was  
23 handwritten on the envelope. In addition, another certified mailing certificate was  
24 affixed to the back of the envelope, presumably by someone at Respondent's  
25

attempted communications by the post office during the month of May.

3  
4 87. On or about May 26, 2005, a State Bar investigator, Vic Ayala  
5 traveled to the address of record for Respondent. The receptionist at that location,  
6 177 N. Church, informed Mr. Ayala that Respondent had not worked in the office  
7 building for the past four months and had not left a forwarding address or  
8 telephone number.  
9

10 88. Mr. Ayala next traveled to the residential apartment address  
11 handwritten on the subpoena packet that had been returned to the State Bar, 3407  
12 N. 2<sup>nd</sup> Avenue #2109. Mr. Ayala made contact with Respondent who identified  
13 himself as an active attorney, working from his apartment. Respondent indicated  
14 that he would be moving to another apartment soon. Respondent refused to  
15 provide Mr. Ayala with his new address. Respondent refused to provide or verify  
16 his telephone number.  
17  
18

19 89. On or about June 13, 2005, a subpoena duces tecum was issued in  
20 State Bar file nos. 04-1113, and 04-2065, requesting that Respondent appear for a  
21 deposition July 19, 2005, at 10:00 a.m. at the State Bar offices and requesting that  
22 he bring all files pertaining to the estate/clients at issue in State Bar file nos. 04-  
23 1113, and 04-2065, and all client trust account records for the period of April 1,  
24 1997, through June 20, 2005.  
25

1        90. On June 15, 2005, at 8:49 p.m. Respondent was personally served  
2 with the subpoena duces tecum at the residential apartment address.

3  
4        91. Respondent failed to appear for the July 19, 2005, deposition.

5 Conclusions of Law – Count Three (State Bar)

6        92. By failing to respond to a lawful demand for information from a  
7 disciplinary authority in State Bar file no. 04-1113, Respondent violated ER  
8 8.1(b).  
9

10       93. By evading service and refusing to cooperate with the staff of the  
11 state bar in State Bar file no. 04-1113, Respondent violated Rule 53(d).

12       94. By failing to furnish information to bar counsel in State Bar file no.  
13 04-1113, Respondent violated Rule 53(f).  
14

15       95. By failing to respond to a lawful demand for information from a  
16 disciplinary authority in State Bar file no. 04-2065, Respondent violated ER  
17 8.1(b).  
18

19       96. By evading service and refusing to cooperate with the staff of the  
20 state bar in State Bar file no. 04-2065, Respondent violated Rule 53(d).

21       97. By failing to furnish information to bar counsel in State Bar file no.  
22 04-2065, Respondent violated Rule 53(f).  
23  
24  
25

1           98. By failing to provide the state bar office a current street address and  
2 telephone number within thirty days of its effective date Respondent violated  
3 Rule 32(c)(3).  
4

5           99. By engaging in all of the foregoing misconduct prejudicial to the  
6 administration of justice, as referenced and specified in Counts One, Two and  
7 Three of this complaint, Respondent violated ER 8.4(d).  
8

9                           **Legal Analysis**

10           When a Respondent is properly served and noticed and fails to respond as  
11 required by the rules, allegations of the complaint are deemed admitted. Rule  
12 53(c)1, Ariz.R.S.Ct., *In re Zang*, 158 Ariz. 251, 762 P.2d 528 (1988).  
13

14           In this case, Respondent was served the original complaint by regular first  
15 class mail and by certified restricted delivery mail to the last address provided by  
16 Respondent to the Bar pursuant to Rule 47(c), Ariz.R.S.Ct. Respondent was also  
17 served by regular first class mail to his last known physical address as ascertained  
18 by State Bar investigators. Notice of Service of the original complaint was filed  
19 with the Disciplinary Clerk, as required by rule, on September 12, 2005.  
20 Respondent refused service of the certified mail. The regular mail sent to his  
21 address of record was returned as undeliverable. Mail sent to Respondent's  
22 physical address was not returned.  
23  
24  
25

1 Respondent was served the amended complaint by regular first class mail  
2 and by certified restricted delivery mail to the last address provided by  
3 Respondent to the Bar pursuant to Rule 47(c), Ariz.R.S.Ct., and to his last known  
4 physical address as ascertained by State Bar investigators. Notice of Service of  
5 the amended complaint was filed with the Disciplinary Clerk, as required by  
6 Rule, on November 2, 2005. Respondent refused service of both the certified  
7 mailings. All regular mail was returned.  
8  
9

10 The State Bar received no returned mail that indicated a forwarding address  
11 had been provided to the post office. To date, the State Bar has received no  
12 change of address notice from Respondent. The State Bar has received no  
13 telephone calls or email correspondence from Respondent.  
14

15 In determining the appropriate sanction in a disciplinary matter, the  
16 analysis should be guided by the principle that the ultimate purpose of discipline  
17 is not to punish the lawyer, but to set a standard by which other lawyers may be  
18 deterred from such conduct while protecting the interest of the public and the  
19 profession. *In re Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986).  
20

21 Application of the ABA Standards:  
22

23 The American Bar Association *Standards for Imposing Lawyer Sanctions*  
24 are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz.  
25 149, 791 P.2d 95 (1990). In drafting the ABA *Standards* the Committee

1 developed a model which requires the body imposing sanctions to consider the  
2 following four factors: 1) the duties violated; 2) the lawyer's mental state; 3)  
3 the potential or actual injury caused by the lawyer's misconduct; and 4) the  
4 existence of aggravating or mitigating factors. *Standard 3.0*.

6 In this matter, Respondent violated duties to his clients and duties to the  
7 legal profession. Specifically, Respondent violated his duties to his clients by  
8 failing to exercise due diligence, failing to communicate, and failing to abide to  
9 the objectives of the representation. Respondent violated his duties to the legal  
10 profession by failing to cooperate in expediting litigation, failing to provide  
11 documentation as ordered by the court, and failing to cooperate with lawful  
12 requests for information concerning this disciplinary matter.

15 The second prong of the analysis under the *Standards* is the lawyer's  
16 mental state when engaging in misconduct. In this matter, Respondent's mental  
17 state was at least knowing, if not intentional. The *Standards* do not account for  
18 multiple charges of misconduct. Knowing is defined as "the conscious awareness  
19 of the nature or attendant circumstances of the conduct without the conscious  
20 objective or purpose to accomplish a particular result." Intentional is defined as  
21 "the conscious objective or purpose to accomplish a particular result." *See*,  
22 *Standards* at page 7. Respondent failed to respond to his client despite repeated  
23 requests by the client in count one. Respondent failed to cooperate with the  
24  
25

1 tribunal in count two. Respondent failed to cooperate with the State Bar in count  
2 three. Each of these suggests conscious awareness of the conduct. Taken  
3 collectively, the misconduct suggests that Respondent intended to accomplish the  
4 particular results of his inaction.  
5

6 The ultimate sanction imposed in disciplinary matters should at least be  
7 consistent with the sanction for the most serious instance of misconduct among a  
8 number of violations; it might well be and generally should be greater than the  
9 sanction for the most serious misconduct. *See Standards* at page 6. *In re*  
10 *Redeker*, 177 Ariz. 35, 868 P.2d 318 (1994).  
11

12 In this matter the following *Standards* should therefore be considered:  
13

14 Disbarment is generally appropriate when:

15 (a) a lawyer abandons the practice and causes serious or potentially  
16 serious injury to a client; or

17 (b) a lawyer knowingly fails to perform services for a client and  
18 causes serious or potentially serious injury to a client; or

19 (c) lawyer engages in a pattern of neglect with respect to client  
20 matters and causes serious or potentially serious injury to a client.

21 Lack of Diligence - *Standard 4.41*  
22

23 Disbarment is generally appropriate when a lawyer knowingly  
24 converts client property and causes injury or potential injury to a  
25 client.

Failure to Preserve Client's Property – *Standard 4.11*  
22

23 Disbarment is generally appropriate when a lawyer knowingly  
24 engages in conduct that is a violation of a duty owed to the profession  
25 with the intent to obtain a benefit for the lawyer or another, and  
causes serious or potentially serious injury to a client, the public or the  
legal system.

*Standard 7.1*

1 Suspension is generally appropriate when a lawyer knowingly  
2 engages in conduct that is a violation of a duty owed as a professional,  
3 and causes injury or potential injury to a client, the public, or the legal  
4 system.

5 *Standard 7.2*

6 Most generously construed, Respondent's violations warrant at least a long-  
7 term suspension, but the public and the profession are best protected by  
8 disbarment.

9 The third prong to be considered under the *Standards* is the injury or  
10 potential caused by Respondent's misconduct in these matters. The harm is as  
11 follows. As to Count One, Fred Corron suffered actual and serious injury by  
12 virtue of the loss of approximately \$14,000.00 from the estate of his mother,  
13 which Respondent was hired to probate. As to Count Two, Randall Sammons  
14 and his clients suffered actual and serious injury by virtue of Respondent's failure  
15 to reimburse the estate and pay attorney's fees totally over \$20,000.00. The legal  
16 system has suffered actual injury by Respondent's failure to cooperate not only  
17 with the courts, but also with the disciplinary process.

18  
19  
20  
21 Last, aggravating and mitigating factors are to be considered. The  
22 applicable aggravating factors, as set forth in *Standards* 9.22, are as follows:

- 23 (b) dishonest or selfish motive;  
24 (c) a pattern of misconduct;  
25 (d) multiple offenses;  
(e) bad faith obstruction of the disciplinary proceeding by intentionally  
failing to comply with the rules or orders of the disciplinary agency;



- (g) refusal to acknowledge wrongful nature of conduct;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution.

From the evidence, it can be inferred that Respondent had a selfish motive when he failed to diligently communicate with his client, Fred Corron, in order to conceal his failure to maintain the integrity of the estate. Similarly, from Respondent's card, a selfish motive to keep unreasonable fees charged to the estate and in failing to repay the judgment as ordered by the court in the matter of the Estate of Victoria Enderle, can be inferred.

Respondent has demonstrated a pattern of misconduct and committed multiple offenses by virtue of the two cases relevant in this matter.

Respondent failed to make any effort whatsoever to respond to the Bar, to request assistance or extensions, or otherwise comply with his duties under the rules of professional conduct governing lawyers.

Respondent's failure to respond in this matter may be interpreted as a refusal to acknowledge the wrongful nature of his conduct.

Respondent has been licensed to practice law in Arizona since 1985.

Respondent's failure to respond in this matter, his failure to return the balance of the estate to Fred Corron, and his failure to pay the judgment as awarded in the Estate of Victoria Enderle may be interpreted as an indifference to making restitution.

1 The only mitigating factor to be considered in this matter, as set forth in  
2 *Standard 9.32(a)*, is Respondent's absence of a prior disciplinary record.

### 3 Proportionality Review

4  
5 To have an effective system of professional sanctions, there must be  
6 internal consistency, and it is appropriate to examine sanctions imposed in cases  
7 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567  
8 (1994) (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)). However, the  
9 discipline in each case must be tailored to the individual case, as neither  
10 perfection nor absolute uniformity can be achieved. *Matter Riley*, 142 Ariz. 604,  
11 615 (1984).  
12

13  
14 In reviewing the proportional sanctions and conduct of other cases, the  
15 following are instructive.

16 *In re McDaniel*, SB 05-0134-D (2005), Respondent violated ERs 1.1,  
17 1.2(a), 1.3, 1.4(a) & (b), 1.5(a), 1.16(d), 3.2, 3.3(a)(1), 8.1(b), 8.4(c) & (d) and  
18 Rules 53(b), (c), (d) and (f). Respondent failed to exercise due diligence and  
19 competence by failing to act timely and with candor. Respondent failed to keep  
20 his clients informed and to pursue their legitimate interests in an appropriate  
21 manner. Respondent also failed to cooperate with the State Bar's inquiries and to  
22 respond to the complaints. Respondent was suspended for six months and one  
23 day. *In McDaniel*, Respondent appeared and participated in the  
24  
25

1 aggravation/mitigation hearing at which time the hearing officer found seven  
2 aggravating factors and six mitigating factors. The misconduct was knowing and  
3 there was actual injury to the clients.  
4

5 *In re Miranda*, SB 05-0126-D (2005), Respondent violated ERs 1.2(a), 1.3,  
6 1.4, 3.2, 1.7(b), 1.8(a), 1.15(a), (b), & (e), 1.16(d), 8.1(b), 8.4(c) & (d) and Rules  
7 43, 44, 53(d) & (f). In multiple counts, Respondent failed to preserve client  
8 property, failed to perform services for clients as contracted, failed to avoid a  
9 conflict of interest, and failed to maintain personal integrity. Respondent engaged  
10 in blatant self dealing, demonstrated a lack of candor, and converted client property  
11 for his own personal use and benefit. Respondent also failed to respond or  
12 cooperate with the State Bar's investigations. Respondent was disbarred. There  
13 were nine aggravating factors, and no mitigating factors. The misconduct was  
14 knowing, and there was serious injury to Respondent's clients.  
15

16  
17 *In re Reed*, SB 05-0083-D (2005), Respondent violated ERs 1.1, 1.2, 1.3,  
18 1.4, 1.5, 1.15, 1.6, 3.2, 5.5, 8.1(b), 8.4(c) & (d) and Rules 31(b), 43, 43(d), 44,  
19 51(h) & (i) and 53 (d) & (f). Respondent engaged in a pattern of violations of the  
20 rules regarding management of his client trust account. Respondent failed to  
21 diligently represent and communicate with clients and failed to respond or  
22 cooperate with the State Bar's investigation. Respondent accepted a three-year  
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1 suspension. There were three aggravating factors and three mitigating factors.  
2 The misconduct was knowing and there was only potential injury.

3         *In re Brown, SB 05-0054-D* (2005), Respondent violated ERs 1.2, 1.3, 1.4,  
4 1.5, 1.15(a), 1.16, 3.2, 8.4(d) and Rule 32(c)(3) and 53(d) & (f). After receiving  
5 substantial retainers, Respondent abandoned clients and their cases and refused to  
6 return any fees paid. Respondent failed to communicate with his clients, failed to  
7 return files containing original documents, and lied to clients about the status of  
8 their cases. Respondent also failed to respond or cooperate with the State Bar's  
9 investigation. Respondent was disbarred. There were six aggravating factors and  
10 no mitigating factors. The mental state was knowing and there was serious  
11 injury.

12         *In re Clark* Supreme Court No. SB-04-0086-D (2004), addressed  
13 misconduct involving violations of Rule 42, Ariz.R.S.Ct., specifically, ERs 1.2,  
14 1.3, 1.4, 1.15, 1.16(d), 8.4(d) and Rule 51(h). Clark was suspended for six  
15 months and one day and was ordered placed on probation for a period of two  
16 years effective upon reinstatement. The facts in *Clark* involved three separate  
17 underlying cases wherein Respondent failed, to various degrees, to diligently  
18 represent clients. In each case Respondent failed to timely respond to the State  
19 Bar's allegations. Aggravating factors included prior discipline, pattern of  
20 misconduct, multiple offenses, failure to cooperate with the screening  
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1 investigation, substantial experience in the practice of law and an indifference to  
2 making restitution. No mitigating factors were found.

3  
4 *In re Crown, SB-03-0129-D (2003)*: Crown engaged in multiple violations  
5 of ERs 1.1, 1.2, 1.3, 1.4, 1.15, 1.16, 3.2, 4.1, 8.1(b) and 8.4(d) as well as Rules  
6 43, 44 and 51(h). The hearing officer found four mitigating factors (multiple  
7 offenses, bad-faith obstruction, failure to acknowledge misconduct and  
8 substantial experience) and two mitigating factors (no disciplinary history and no  
9 dishonest or selfish motive). Crown was suspended for six months and one day.

10  
11 *In re Counce*, Supreme Court No. SB-03-0071-D (2003), involved  
12 misconduct for violations of Rule 42, Ariz.R.S.Ct., specifically ERs 1.1, 1.2, 1.3,  
13 1.4, 1.16(d), 3.2 and 8.1 as well as Rule 51(h) and (i). Counce was suspended for  
14 six months and one day and ordered placed on probation for a period of two years  
15 upon reinstatement. The facts in *Counce (2003)* involved only one underlying  
16 case. Counce failed to respond to the State Bar during the investigation.

17  
18  
19 After the above-referenced suspension, a second case was considered, *In re*  
20 *Counce*, Supreme Court No. SB-03-0163-D (2004), which resulted in Counce's  
21 disbarment. *Counce (2004)* involved violations of Rule 42, Ariz.R.S.Ct.,  
22 specifically ERs 1.1, 1.2, 1.3, 1.4, 3.2, 3.4, 8.1(b), 8.4(c) & (d), 1.16(d), 3.3, and  
23 4.1. The facts in this second matter involved four underlying cases. Aggravating  
24 factors included prior disciplinary offenses, pattern of misconduct, multiple  
25

1 offenses, failure to comply with disciplinary rules, refusal to acknowledge  
2 wrongful nature of conduct and substantial experience in the practice of law. No  
3 mitigating factors were found.  
4

5 *In re McFadden*, SB-00-0072-D (2000): McFadden was the subject of a  
6 five-count complaint alleging that he failed to communicate with clients, respond  
7 to their repeated inquiries and return unearned retainers. The hearing officer  
8 found three aggravating factors (multiple offenses, failure to cooperate with State  
9 Bar and substantial experience) and one mitigating factor (no disciplinary  
10 history). McFadden was suspended for two years. However, in addition to his  
11 client-related misconduct, he had practiced law while suspended for nonpayment  
12 of bar dues and noncompliance with MCLE requirements.  
13  
14

15 *In re Elowitz*, 177 Ariz. 240, 866 P.2d 1326 (1994), involved violations of  
16 Rule 42 Ariz.R.S.Ct., specifically ERs 1.1, 1.2, 1.3, 1.5, 1.15, 1.16(d), 3.2, 3.3(a),  
17 3.4(b), 8.1, and 8.4. Elowitz was disbarred. The facts involved six underlying  
18 matters wherein Elowitz violated a number of duties to his clients and the legal  
19 system. The court found only one mitigating factor, absence of a prior  
20 disciplinary record.  
21  
22

23 *In re Henry*, 168 Ariz. 141, 811 P.2d 1078 (1991), involved violations of  
24 Rule 42, Ariz.R.S.Ct., specifically ERs 1.1, 1.3, 1.4, 1.15, 1.16(d), 8.1, and 8.4.  
25

1 Henry was disbarred for his misconduct. The court found several aggravating  
2 factors and no mitigating factors.

### 3 Conclusion

4  
5 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
6 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
7 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
8 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.  
9 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
10 the bar's integrity. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

11  
12 Here, Respondent appears to have abandoned his practice. Respondent  
13 either intentionally or knowingly engaged in significant, repeated acts of  
14 misconduct that resulted in serious harm to his clients. Respondent also failed to  
15 respond to the disciplinary process, causing harm to the legal system and to the  
16 profession. Of significant concern is Respondent's apparent misappropriation of  
17 funds from the Estate of Rita J. Corron and his failure to repay the judgment  
18 ordered in the Estate of Victoria Enderle. Additionally, Respondent is currently  
19 suspended for MCLE violations.  
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Respondent should be ordered to pay restitution in the following amounts:

Count One: \$21,231.95 to the Estate of Rita J. Corron. \$6,406.00 for attorney's fees charged since services of little value were rendered, plus interest at the statutory rate, and \$14,825.95, the amount that should have been held in trust by Respondent. The amount of \$14,825.95 was calculated by deducting from the initial estate deposit of \$69,731.95, attorneys fees in the amount of \$6,406.00 and distributions to heirs of the estate in the amount of \$48,500.00.

Count Two: \$20,370.00 to the Estate of Victoria Enderle, plus interest at the statutory rate from the date of entry of the judgment. This amount has been previously determined by the court and was ordered by a judgment entered in the Pima County Superior Court on February 24, 2004. A copy of the judgment is attached as Exhibit A.

In the event that the victims of Respondent's misconduct are made whole by application to the State Bar Client Protection Fund, Respondent should be likewise ordered to reimburse the client protection fund in the appropriate and applicable amounts.

• • • ■



1 Respondent should be ordered to pay the costs and expenses incurred in  
2 these disciplinary proceedings.

3  
4 **DATED** this 8<sup>th</sup> day of March, 2006.

5  
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7  
8 

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Dwight M. Whitley, Jr.  
9 Hearing Officer 91

10 Original of the foregoing mailed  
11 this 8<sup>th</sup> day of March, 2006, to:

12 Disciplinary Clerk of the Supreme Court  
13 Certification and Licensing Division  
14 1501 W. Washington, #104  
15 Phoenix, Arizona 85007-3329

16 Copy of the foregoing mailed  
17 this 8<sup>th</sup> day of March, 2006, to:

18 Paul G. Menkveld  
19 177 North Church, Suite 200  
20 Tucson, AZ 85701-1369  
21 Respondent

22 and

23 Paul G. Menkveld  
24 3407 North Second Avenue, No. 2109  
25 Tucson, AZ 85705  
Respondent

1 Lawyer Regulation Records Manager  
2 State Bar of Arizona  
3 4201 N. 24<sup>th</sup> Street, Suite 200  
4 Phoenix, Arizona 85016

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